UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1995/30
21 July 1995

ENGLISH
Original: ENGLISH/FRENCH

COMMISSION ON HUMAN RIGHTS
Subcommission on Prevention of
Discrimination and Protection
of Minorities
Forty-seventh session
Item 17 (a) of the provisional agenda

PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS AT NATIONAL, REGIONAL AND INTERNATIONAL LEVELS

PREVENTION OF DISCRIMINATION AND PROTECTION OF CHILDREN: HUMAN RIGHTS AND YOUTH

Situation of children deprived of their liberty

Note by the Secretary-General prepared pursuant to Subcommission resolution 1994/9

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GE.95-13037 (E)

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INTRODUCTION

1. The present note is submitted by the Secretary-General in accordance with paragraph 3 of the Subcommission resolution 1994/9 of 19 August 1994 entitled "Situation of children deprived of their liberty". In paragraph 2 of the resolution, the Subcommission urged all the relevant human rights treaty monitoring bodies, the United Nations Children's Fund, the International Labour Organization, the World Health Organization and the International Criminal Police Organization, Governments, and other intergovernmental and non-governmental organizations to give particular attention to their work to the grave situation of children deprived of their liberty and to the implementation of provisions and standards designed to ensure their protection.

2. Preparatory to this note, the Secretary-General had invited Governments, by a note verbale of 3 May 1995, to provide relevant information. At 18 July 1995, the Governments of Saudi Arabia and the Federal Republic of Yugoslavia (Serbia and Montenegro) had sent such information.

3. Requests for information were also sent, on the same date, to the relevant human rights treaty bodies, the specialized agencies and intergovernmental and non-governmental organizations. As of 18 July 1995, information had been received from the Chairman of the Committee on the Rights of the Child, the International Labour Organization and the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders.

4. This note compiles the comments received from the above-mentioned Governments, bodies and organizations. Any further information will be submitted in an addendum to this note.

5. With reference to this issue, it may be pointed out that in its resolution 1993/27 of 25 August 1993, the Subcommission requested the Secretary-General to report on the results of the expert group meeting on children and juveniles in detention, organized by the Centre for Human Rights with the cooperation of the Crime Prevention and Criminal Justice Branch and the United Nations Children's Fund. The Subcommission is to consider the report of that expert group meeting (E/CN.4/1995/100) under item 10 (c) of its provisional agenda.

6. The Commission on Human Rights, at its fifty-first session, in its resolution 1995/41, took note with appreciation of the recommendations of the meeting which was held at Vienna from 30 October to 4 November 1994, with the cooperation of the Government of Austria. The Commission invited Governments to provide training in human rights and juvenile justice to all judges, lawyers, prosecutors, social workers and other professionals concerned with juvenile justice, including police and immigration officers.

7. Attention may be also drawn to the report of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Cairo from 29 April to 8 May 1995 (A/CONF.169/16). The Congress adopted two resolutions relating to children and juveniles as victims and perpetrators of crime. Both resolutions are reproduced in annex to this note.

I. INFORMATION RECEIVED FROM GOVERNMENTS

Saudi Arabia

[7 June 1995]
[Original: English]

8. The situation of children deprived of their liberty is well taken care of in accordance with the national legislation of the Kingdom of Saudi Arabia.

Yugoslavia

[11 July 1995]
[Original: English]

9. For many years, the former Yugoslavia addressed and solved all problems related to juvenile crime and, by the same token, to children deprived of their liberty, as these problems were within the bounds of what was expected either by the number of perpetrators, type of criminal acts or the length of sentences. The system of legal protection was adjusted to the situation and based on preventive measures and the assumption of innocence, while the punishment and imprisonment policy fully respected the physical, mental and social development of juveniles.

10. The Federal Republic of Yugoslavia, the heir to that practice and policy, still has only one prison for juvenile delinquents (the Penal-Correctional Institution in Valjevo) in which persons up to 23 years of age also serve their sentences. The Federal Republic of Yugoslavia has no separate juvenile courts either, so that a specially qualified Council is provided in criminal proceedings against juvenile delinquents. Jurors, equal to judges in decision-making, must possess special knowledge and experience in working with children.

11. The negative social trends and consequences of the economic and war crises and resultant depression brought about an increase in the deviant behaviour of children and, by extension, in the commission of criminal acts and infractions. Since 1990 and 1991, the years in which the war in the former Yugoslavia broke out, juvenile delinquency has increased sharply, so that in 1993 and 1994 minors committed 4,000 criminal acts, equalling the overall number of criminal acts committed in the 5-6 years prior to 1990.

12. According to some unofficial data, juvenile crime accounts for about 50 per cent of the total number of criminal acts committed in the Federal Republic of Yugoslavia. This brought about an increase in the number of judges for juvenile delinquents (there were 1-2 such judges for decades in the District Court of Belgrade while there are 7 of them now). Besides, the number of minor offences has decreased while the number of grave offences, like robbery, has increased. Also these offences are now committed with the use of force and arms. Brutality and ruthlessness are rife.

13. The root causes of these phenomena are to be found in the change of the social milieu brought about by the war in Yugoslavia's vicinity, availability

of all sorts of weapons and, not least in importance, in the impoverishment of the entire society in the wake and as a consequence of the unfair and unjust United Nations sanctions which affect all fields of social life.

14. Social values change and those extolling wealth and a quick way of acquiring it are speedily superseding the ones that once extolled learning, for instance. This could not but affect the younger generation in the way that some young men and women are tempted to look for an easy way out. Not surprisingly, some of them end up in juvenile delinquency, the most frequent forms of which are theft and robbery.

15. The situation has not been conducive to the preventive work of social institutions and the influence of the family in the suppression of juvenile delinquency, one of the cornerstones of the juvenile protection system. Nevertheless, a juvenile delinquency prevention pilot programme of the Social Work Centre and the City Ministry of Internal Affairs has been introduced in Belgrade, capital of the Federal Republic of Yugoslavia, for children under 14 years of age. During the first 3 months, social workers will provide expert assistance to the families of juvenile delinquents. Next, they will step up daily non-school activities of juvenile delinquents. The success of this pilot programme will also depend on cooperation from other segments of society, particularly the educational authorities and media.

16. As to the treatment of children deprived of their liberty, efforts are being made in the Federal Republic of Yugoslavia to ensure legal protection of juveniles in the conditions and the way which guarantee them the rights to life (capital punishment is excluded), physical integrity and safety, humane treatment, separation from adult criminals in prisons, as well as all other rights provided for by the Beijing Rules, United Nations Rules for the Protection of Juveniles Deprived of their Liberty and other relevant documents. Trying a juvenile is not a quest for a balance between deed and punishment, but for a way to help him/her not to become a criminal.

17. The decision on the detention of a juvenile during criminal proceedings is taken only exceptionally and on the basis of the decision of a judge for juvenile delinquents while a juvenile cannot be detained longer than one month. The detention can be extended to another two months by the court council for juveniles, but only after it has scrupulously considered the reasons justifying such an extension.

18. A juvenile is entitled to legal assistance from the beginning of preliminary proceedings and must have legal assistance from the beginning of preliminary proceedings if the criminal act he/she has committed is punishable with over five years in prison. The judge for juvenile delinquents will determine whether a juvenile needs legal assistance for criminal acts punishable with a milder punishment. Furthermore, if a juvenile, his/her legal representative or relatives do not enlist legal assistance, one will be ordered ex officio by the judge for juvenile delinquents. Legal assistance to a juvenile can be rendered only by an attorney.

19. Detention as a measure against juveniles is generally avoided since it is contrary to the goals and purpose of proceedings against juveniles and is

therefore within the prosecutor's discretion. To protect them, instead of being detained, the juveniles are sent to reception centres, educational or similar institutions where, in more humane conditions and with the assistance of psychologists and pedagogues, the process of their re-socialization begins before an educational measure is determined. In determining the educational measure, the court is guided by the reports of pedagogues, psychologists and other experts and, in 90 per cent of cases, more lenient educational measures are established.

20. The following are the educational measures passed against juvenile delinquents:

(a) Disciplinary measures: reprimand or sending to a disciplinary centre for juveniles;

(b) Stepped-up surveillance by parents, foster parents or custodians or some other family; surveillance by competent social organ; and

(c) Institutional educational measures which imply sending to: (i) educational institutions; (ii) educational and correctional institutions; or (iii) special institutions for treatment and rehabilitation.

21. The Law on the Enforcement of Criminal Sanctions provides for the way of implementing educational measures against juveniles.

22. A juvenile in need of constant surveillance by expert tutors in a general-purpose educational institution is sent to an educational institution for between six months and three years. The court determines the duration of this measure subsequently rather than at the time of adopting it. In the educational institution, a juvenile has the same rights and obligations as other wards, while special educational and surveillance attention is devoted to him. Only the head of the institution and his/her tutor know that a juvenile has been sent to the institution by a court order, while other wards are unaware of the fact. Every six months, or earlier at the request of the court, the educational institution advises the court and the trusteeship organ of the progress of the measure.

23. A juvenile delinquent on whom it is necessary to pass stricter measures of re-education is sent to an educational-correctional institution for between one and five years. These are specialized establishments for the re-education of juvenile delinquents. Rather than at the time of adopting it, the court will determine the duration of this measure subsequently depending on the behaviour of a juvenile in an educational-correctional institution and the progress of his/her re-socialization. The average duration is between two and three and a half years.

24. Within the first 30 days, a juvenile in an educational-correctional institution is socially, medically, psychologically and pedagogically examined. Juveniles are treated in groups of at most eight persons according to their age, mental development and other personal characteristics, so that the same educational measures can be applied. Each group is headed by a tutor. There are 16 such institutions in the Federal Republic of Yugoslavia.

25. The re-education process includes the following measures:

(a) Active participation in educational and correctional work for the purpose of acquiring and developing positive personal characteristics, which implies provision of appropriate education in the institution or a regular secondary school if no conditions for such education exist in the institution. However, if the principal assesses that a juvenile has a negative influence on the behaviour of other students, the right of the juvenile to attend classes in a regular secondary school would be denied;

(b) Active use of leisure time, including participation in cultural, entertainment, art, sport and other activities;

(c) Maintenance of contacts with family and other persons and organs important for re-socialization of the juvenile.

26. If a juvenile does not attend school, he/she works in accordance with the rules and regulations on the work of under-age persons. A juvenile in the educational-correctional institution also has the right to vacation to between 18 and 30 working days which is, as a rule, spent outside the institution.

27. The latest amendments to the Law on the Enforcement of Criminal Sanctions provide for the possibility of all wards, including juveniles deprived of their liberty, to practise religion.

28. Reward is provided for those juveniles who deserve it by their conduct, work discipline and other activities in the re-education process: they are allowed to spend some time outside the institution, attend cultural, art and sport events outside the institution, visit their families and relatives on weekends and holidays, participate in cultural and sport events outside the institution and have a seven-day leave.

29. A juvenile who does not observe the rules and discipline can be separated to a room for seven days. Coercion against juveniles in the institution is used only exceptionally and it includes physical force, tying up, separation, rubber truncheon, only if necessary to prevent an assault on an official, other juvenile or in the case of self-wounding. Firearms can be used against a juvenile only to prevent an imminent assault and if by other means of coercion the life of a juvenile or another person cannot be protected.

30. The educational-correctional institution is duty-bound to advise, at least every six months, the court and the trusteeship organ of the results of the measures applied.

31. The Law on the Enforcement of Criminal Sanctions provides for the obligation of the trusteeship organ (social work centre in the municipality in which a juvenile resides) to ensure a juvenile, after the completion of educational measures, financial assistance, employment, temporary accommodation and to work with his family to accept him adequately.

In practice, however, due to scarce material resources available to social work centres and general impoverishment, a juvenile leaving an educational-correctional institution is often left to himself/herself or his/her family, not infrequently the cause of his/her delinquency itself, so that recidivism is quite a common phenomenon.

32. Juveniles are treated and rehabilitated in specialized institutions determined by the organs in charge of social and health care. These institutions are also duty-bound to advise the court and the trusteeship organ every six months of the progress in the implementation of educational measures and upon a juvenile reaching maturity of the need to re-examine the necessity of his/her further stay in the institution or of replacing this educational measure by some other.

33. Only an older juvenile (over 16 years of age) who has committed a criminal act punishable with more than 5 years in prison can be sentenced to imprisonment in a juvenile prison. As has already been said, there is only one penal-correctional institution, i.e. juvenile prison, in the Federal Republic of Yugoslavia. It consists of a number of modern facilities (dormitories, a school, a cultural centre and a hall with workshops). It provides education for 25 vocations and former wards frequently enrol in universities as part-time students upon completion of their terms.

34. The conditions in this institution are very liberal so that the young people, who have become delinquent through an unfortunate concourse of circumstances, live as normal a life as possible. They do not wear typical prison uniforms and are not obliged to wear caps all the time. Daily meals contain 14,500 J and that figure can be increased if required (e.g. work on the prison farm).

35. On arrival at the prison, a team of experts (psychologists, pedagogues, social workers, doctors, tutors) examine a juvenile's abilities and possibilities for the correction of his/her behaviour considering the criminal act he/she has committed. On that basis, juveniles are classified into three groups: open stay (with 10-day leave outside the prison), half-open or closed stay and the plan and programme of educational and corrective work with juveniles are adjusted accordingly. All wards jointly serve their sentences in groups headed by tutors and juveniles convicted of the same criminal acts or their accomplices are not put in the same group. The juveniles are worked with individually, in groups, frontally and in various other forms applicable elsewhere in the world.

36. Although there is a wider concurrence of opinions in Yugoslavia and in relevant foreign organizations and agencies that children deprived of their liberty in the Federal Republic of Yugoslavia are provided high-level conditions for serving their terms, there is no doubt that an international exchange of experience in this field, rendered impossible by the United Nations sanctions, would highly benefit those who are the subject-matter of this report.

II. INFORMATION RECEIVED FROM UNITED NATIONS BODIES AND SPECIALIZED AGENCIES

Committee on the Rights of the Child

[9 June 1995]
[Original: French]

37. The Committee on the Rights of the Child attaches particular importance to the question of the administration of juvenile justice in the framework of the consideration of reports submitted by States parties to the Convention on the Rights of the Child on measures taken to give effect to the rights recognized in the Convention. In this connection, the Committee considers the situation of children in the light of the relevant articles of the Convention, namely articles 37, 39 and 40, taking due account of the general principles underlying the Convention (art. 2 on non-discrimination; art. 3 on the best interests of the child; and art. 12 on respect for the views of the child).

38. In the conclusions adopted by the Committee after its exchange of views with States parties, matters relating to the administration of juvenile justice and, more particularly, to the situation of children deprived of liberty are generally the subject of serious concerns and of suggestions by the Committee regarding the possibility of using advisory services and technical assistance in this field.

39. In the light of the experience gained in the consideration of the reports of States parties, and its participation in the United Nations expert group meeting on children and juveniles in detention, held at Vienna (30 October-4 November 1994), the Committee has decided to engage in a general debate at its tenth session, on 10 October 1995, on the question of the administration of justice for minors. The Committee considers that the exchange of views on this subject, in which the Subcommission is invited to participate, will foster greater awareness of the situation of children in conflict with the law by calling attention to the necessity for further action in guaranteeing the effective application of international norms in this field.

40. Lastly, the Committee expresses the hope that the Subcommission will, in its activities relating to children deprived of liberty, be able to draw on the principles and provisions of the Convention on the Rights of the Child.

International Labour Organization

[30 May 1995]
[Original: English]

41. Although there is no instrument adopted to deal in particular with the situation of children deprived of their liberty, some of the fundamental principles set forth in international labour standards are indeed relevant to the situation.

42. The first to be mentioned is the Forced Labour Convention, 1930 (No. 29), which has been ratified by 136 States. This Convention has a bearing on prison labour, regardless of the age of the person concerned. It deals with the suppression of forced or compulsory labour generally, subject only to stated exceptions. One of these exceptions relates to prison labour, defined as "any work or service extracted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations" (art. 2, para. 2 (c) of the Convention).

43. It follows that compulsory labour imposed as correction or punishment falls outside the scope of this Convention only if certain conditions are met: first, the labour must be imposed "as a consequence of a conviction"; second, the conviction must be pronounced "in a court of law"; third, the work must be carried out under the supervision and control of a public authority and the prisoner must not be hired or placed at the disposal of private individuals, companies or associations. Therefore, it is clear that the persons who are in detention but have not been convicted - such as prisoners awaiting trial or persons detained without trial - should not be obliged to perform labour; and that compulsory labour imposed by administrative or other non-judicial bodies or authorities is not compatible with the Convention.

44. Secondly, international labour conventions concerning the minimum age for admission to employment or work are also relevant to the children deprived of their liberty. It has been emphasized by the Committee of Experts that the Minimum Age Convention, 1973 (No. 138) covers "employment or work", which means "all economic activity, regardless of the formal employment status of the person concerned". Thus, there seems to be no reason to permit child labour under the minimum age because it happens during the detention.

45. Meanwhile, Convention No. 138 permits exception regarding work done by children in school or other training institutions and work done by persons of at least 14 years of age in undertakings, again subject to certain conditions: first, such work should be carried out in accordance with prescribed conditions; second, it should be an integral part of a course of education or training, an on-the-job training programme, or an occupational guidance programme (art. 6 of the Convention).

46. It should be borne in mind that the mechanism of enforcement is extremely important in such an issue as child labour. In various sectors in many countries, difficulties are often pointed out in applying existing rules on minimum age because of the weak labour inspection service. In the case of children deprived of their liberty, such a mechanism is simply non-existent. It is therefore all the more important to keep drawing international attention to the problem.

47. Pursuant to the Subcommission's resolution, particular attention will be paid to the situation of children deprived of their liberty in the work relating to international labour standards.

United Nations African Institute for the Prevention of Crime and the Treatment of Offenders

48. The situation of children deprived of their freedom, particularly those found in probation centres, remains critical in Africa in that a good number of provisions contained in various international instruments relating to children are not yet being implemented.

49. Indeed, those objectives set for the institutional treatment of the whole set of United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules") cannot be implemented as long as adequate resources (human, material and financial) are not allocated to such institutions. It is for this reason that research, planning, policy formulation and assessment are also lacking.

50. As concerns the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), their implementation remains problematic in some areas of the world, particularly in Africa.

51. The inadequate mobilization of local resources is a handicap to the implementation of those plans for general prevention as found in section III and those social actors as defined in section IV (seen as human resources) are not considered in juvenile treatment while preference is given to penal treatment. Furthermore, this reveals also the lack of a social policy which in turn reflects a lack of interest in research and policy formulation in the required multidisciplinary and multisectoral interaction and coordination between, on one hand, the economic, social, education and health organizations and agencies and the judiciary system, youth, community and development organs on the other and all concerned institutions.

52. The United Nations Rules for the Protection of Juveniles Deprived of Liberty are also hard to implement because the probation administration often lacks adequate locally available resources (human, material and financial) for the formulation and implementation of programmes in line with the Rules.

53. In view of these difficulties, all the resources available for the children, both at national and international levels, should be judiciously tapped.

54. On this matter, the regional United Nations institutes for the prevention of crime and treatment of offenders, including UNAFRI for the African region, should all feel concerned. UNAFRI in particular is ready to cooperate with UNICEF, ILO, UNESCO, WHO and Interpol in the field of crime prevention and treatment of offenders, in formulating and executing in juvenile institutions such projects as would enhance greater respect for the rights of children deprived of freedom and in so doing also enhance the success of their social reintegration.

Annex

RELEVANT RESOLUTIONS ADOPTED BY THE NINTH UNITED NATIONS CONFERENCE ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

1. Recommendations on the four substantive topics of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

The Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Bearing in mind that one of the purposes of the United Nations, as stated in the Preamble to the Charter of the United Nations, is to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all,

Bearing in mind also the responsibility assumed by the United Nations in the field of crime prevention and criminal justice under Economic and Social Council resolution 155 C (VII) of 13 August 1948 and General Assembly resolution 415 (V) of 1 December 1950,

Bearing in mind further General Assembly resolution 46/152 of 18 December 1991, on the creation of an effective United Nations crime prevention and criminal justice programme,

Recalling Economic and Social Council resolutions 1992/24 of 30 July 1992, 1993/32 of 27 July 1993 and 1994/19 of 25 July 1994, on preparations for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling also Economic and Social Council resolution 1993/34 of 27 July 1993, on the implementation of General Assembly resolutions 46/152 and 47/91 and Economic and Social Council resolution 1992/22, concerning crime prevention and criminal justice,

Recalling further Economic and Social Council resolution 1993/31 of 27 July 1993, on the strengthening of the United Nations crime prevention and criminal justice programme,

Recalling the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, and General Assembly resolutions 48/132 of 20 December 1993 and 49/194 of 23 December 1994 in which the value of technical cooperation programmes aimed at strengthening democratic institutions, the rule of law and national human rights infrastructure was repeatedly underlined,

Recalling General Assembly resolution 48/137 of 20 December 1993, in which the Assembly recognized the central role of the administration of justice in the promotion and protection of human rights,

Recalling Commission on Human Rights resolution 1994/64 of 9 March 1994 and General Assembly resolution 49/147 of 23 December 1994, on measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the relevant paragraphs of the Vienna Declaration and Programme of Action,

...

Convinced that the provision of operational activities, such as advisory services, training programmes and the dissemination and exchange of information, is one of the best means of intensifying international cooperation,

...

Alarmed by the threats posed by transnational organized crime, terrorist crimes and their links, violent activities in urban areas, illicit drug trafficking, illicit arms trafficking, international trafficking in minors, alien smuggling, economic crime, forgery of currency, environmental crime, corruption, crime against cultural property, motor vehicle theft, computer and telecommunications-related crime, money laundering and the infiltration of legitimate economies by organized criminal groups, and the effects of those activities on society,

...

Aware that the full enjoyment of human rights can be facilitated through concerted efforts by Member States to prevent and control national and transnational crime, taking into account United Nations law enforcement and human rights standards,

...

Aware that the mass media, by focusing on violence in, inter alia, films and reports, often may have negative consequences, but also aware that the mass media can play a very positive role in crime prevention and criminal justice by explaining, inter alia, complex factors that condition the various manifestations of delinquency,

...

According central importance to matters of crime prevention and criminal justice,

Expressing the desire to pursue collectively intensive multilateral cooperation under the auspices of the United Nations,

...

IV. CRIME PREVENTION STRATEGIES, IN PARTICULAR AS RELATED TO CRIME IN URBAN AREAS AND JUVENILE AND VIOLENT CRIMINALITY, INCLUDING THE QUESTION OF VICTIMS: ASSESSMENT AND NEW PERSPECTIVES

1. Invites Member States to develop effective strategies and programmes for the prevention and control of urban crime, juvenile delinquency and violent crime, including domestic violence, and for the reduction of the levels of victimization, having due regard to the role of the family, the school, religion and the community and taking into account existing economic and social needs and conditions at the level of the whole of society;

2. Urges Member States, in tackling the problem of urban criminality, to develop projects related to juvenile delinquency and on the prevention and control of crimes committed against children and young persons, with special emphasis on the problem of street children and their exploitation for criminal purposes;

3. Invites Member States to pay special attention to the provision of crime prevention activities aimed at young children, with a view to studying the factors associated with criminality and establishing appropriate prevention mechanisms, including counselling services;

4. Expresses its concern about the plight of victims of crime and urges the full use and application of the United Nations Declaration of Basic Principles of Justice fo. Victims of Crime and Abuse of Power and intensified action for the protection of and assistance to victims at the national and international levels, including training, action-oriented research and ongoing information exchange and other means of cooperation in this field;

5. Recommends that the Commission on Crime Prevention and Criminal Justice consider the possible impact of migratory flows on urban criminality;

6. Also invites Member States to consider the problems arising from migratory flows, particularly with regard to the integration of migrants within various social and cultural contexts and the risks that they run of being victims of, or becoming involved in, criminal activities, and urges Member States to take such concerns fully into account when drawing up strategies for crime prevention in urban areas;

7. Urges Member States to adopt, as appropriate, short-term and medium-term preventive measures in such fields as urban planning, housing, education and vocational training, as well as recreational and sports facilities, in high-risk areas;

8. Calls upon Member States to make every effort to adopt effective measures to combat racism, racial discrimination, xenophobia and related intolerance in all their forms;

9. Calls on Member States to promote the adequate regulation of firearms and other high-risk weapons by means of both regulations and law enforcement with a view to diminishing violent criminality;

10. Invites Member States to continue actively to support the organization of workshops and training programmes on the subject of urban criminality, paying specific attention to the interrelationship between urban criminality and social development;

11. Welcomes with satisfaction the proposed guidelines for cooperation and technical assistance in the field of urban crime, annexed to Economic and Social Council resolution 1994/20, and invites the Commission on Crime Prevention and Criminal Justice, at its fourth session, to finalize and adopt them;

12. Urges Member States to develop educational, social and other programmes based on mutual respect and tolerance in order to lower the level of violence in society, with special emphasis on the importance of conflict-prevention and conflict-management mechanisms, alternative dispute resolution mechanisms and other resolution mechanisms, and on the primordial importance of education, at all levels and for all sectors of society;

13. Also urges Member States to give attention to public awareness and to promote the role of information in crime prevention, and invites the Commission on Crime Prevention and Criminal Justice to consider requesting the Secretary-General, in collaboration with specialized research centres and experts, to prepare a manual for public awareness campaigns, to be used to guide States in formulating national public awareness programmes;

14. Recommends that Member States examine the cost-effectiveness of crime prevention measures and custodial and non-custodial sanctions;

15. Further urges Member States to adopt policies on the prevention of juvenile delinquency and to enact, where necessary, appropriate legislation on juvenile justice, taking into account the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which are effective instruments for addressing juvenile delinquency and promoting juvenile justice;

16. Invites the Commission on Crime Prevention and Criminal Justice to call on the regional commissions of the Economic and Social Council, the institutes comprising the United Nations crime prevention and criminal justice programme network and other relevant entities to cooperate closely with each other in planning and implementing joint activities in the area of juvenile justice;

17. Recommends that Member States should establish where necessary local, regional and national bodies for crime prevention and criminal justice, with the active participation of the community, recognizing that the problem of urban violence and crime in all its forms and manifestations gravely impinges on community life;

18. Calls on Member States to consider allocating necessary resources or reallocating existing resources to facilitate the development, if necessary, of local, regional and national bodies to implement crime prevention measures;

19. Recommends that the fundamental rights of children and young persons in relation to crime prevention and criminal justice should be reaffirmed;

20. Invites the Commission on Crime Prevention and Criminal Justice to request the Secretary-General, within existing resources:

(a) To continue studying the effects of criminality in urban areas, the factors contributing to it and measures for its effective prevention, taking into consideration recent developments in inter alia sociology, child and adolescent psychology, health, criminology and technology, including environmentally sound planning, city planning and housing design;

(b) To organize seminars and training programmes to search for ways and means to prevent crime in urban and other areas;

(c) To promote technical cooperation projects on the improvement of juvenile justice systems, taking into account the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

7. Children as victims and perpetrators of crime and the United Nations criminal justice programme: from standard-setting towards implementation and action

The Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Bearing in mind the Convention on the Rights of the Child, the Declaration on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the United Nations Guidelines for the Prevention of Juvenile Delinquency, and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty,

Recognizing that children should enjoy the guarantees, protection and benefit of all human rights recognized in various United Nations instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child,

Noting that the Convention on the Rights of the Child had been ratified by 174 States as of 21 April 1995,

Also noting the recommendations of the expert group meeting on children and juveniles in detention: application of human rights standards, pursuant to Commission on Human Rights resolution 1993/80, held at Vienna from 30 October to 4 November 1994,

Strongly condemning all forms of violence against children and all other violations of their human rights,

Emphasizing that the protection of human rights is a significant consideration within the criminal justice system as a whole, and particularly with regard to children,

Welcoming the role of specialized agencies, non-governmental organizations and the community at large in promoting greater public awareness and more effective action aimed at preventing violence against children, inter alia, by drawing attention to the nature, severity and magnitude of violence against children and by assisting children who are victims of violence,

Recognizing the need for a continuing exchange of information between the various bodies entrusted with the tasks of preventing and combating violence against children,

Convinced that strengthened cooperation at the local, national, regional and international levels is needed to protect children, particularly from becoming victims of crime,

1. Reaffirms the importance of the full implementation of all relevant United Nations human rights instruments in the administration of justice, in particular with regard to children, and the effective use and application of United Nations juvenile justice standards and norms;

2. Recommends that the Commission on Crime Prevention and Criminal Justice invite the Secretary-General to consider ways of elaborating a programme of action aimed at promoting the effective use and application of those instruments, standards and norms, giving due regard to the work accomplished within the Commission on Human Rights, and in cooperation with the United Nations High Commissioner for Human Rights, the United Nations Children's Fund and other agencies and organizations concerned, within existing resources;

3. Calls upon States to support the United Nations crime prevention and criminal justice programme in developing initiatives, approved by the Commission on Crime Prevention and Criminal Justice, to promote universal recognition and effective use and application of these instruments, standards and norms in the administration of justice, in particular with regard to children;

4. Also calls upon States to spare no effort in providing for effective legislative and other mechanisms and procedures, as well as adequate resources, to ensure the effective use and application of those instruments, standards and norms at the national level;

5. Calls upon all States to give due regard to the special situation of children in order to render measures for crime prevention effective;

6. Recommends that the Commission on Crime Prevention and Criminal Justice consider integrating United Nations standards and norms on juvenile justice into the current process of information-gathering;

7. Urges States that are not yet parties to the Convention on the Rights of the Child to become parties to it and urges States that are parties to it to consider withdrawing those reservations that are incompatible with the object and purpose of the Convention on the Rights of the Child and particularly those relevant to the issue of violence against children. Countries which are parties are urged to submit their reports to the Committee on the Rights of the Child in a timely manner;

8. Recommends that States, in a manner consistent with the procedural rules of national law and the administration of justice, with regard to children, should enable children to participate, as appropriate, in criminal justice proceedings, including the investigative stage and throughout the trial and post-trial process period, to be heard and given information about their status and any proceedings that might subsequently take place;

9. Requests the Commission on Crime Prevention and Criminal Justice to invite the Secretary-General to continue including in the various advisory services and technical assistance programmes specific arrangements for technical assistance in the field of criminal justice and the administration of justice, with regard to children. Such assistance may include technical advice in law and criminal justice reform, including the promotion of alternative measures, such as alternatives to custody, diversionary programmes, alternative dispute resolution, restitution, family conferences and community services;

10. Recommends to the Commission that technical cooperation programmes in the field of administration of justice with regard to children should entail appropriate evaluation and follow-up procedures and that United Nations regional institutes, the United Nations Children's Fund, other relevant United Nations bodies, national institutions and non-governmental organizations should be involved as appropriate;

11. Invites States, in cooperation with the relevant United Nations bodies and institutions, to develop multidisciplinary training, taking into account national and international instruments, standards and norms with respect to juvenile justice and human rights for law enforcement personnel and other professionals concerned with children. Training should further include information on child development, improving communication with children, increasing knowledge on available facilities for their treatment and rehabilitation of child victims and offenders;

12. Recommends that States ensure that all structures, procedures and programmes in the administration of justice with regard to child offenders should promote assistance to allow children to take responsibility for their actions and to encourage, inter alia, reparation, mediation and restitution, especially for the direct victims of the crime;

13. Calls upon States to explore measures to ensure compliance with the principle that the deprivation of liberty should only be used as a measure of last resort and for the shortest appropriate period of time, both before trial and after conviction, bearing in mind the high rate of children on remand and the considerable amount of time they must often spend in custody;

14. Recommends that States, together with national and international organizations, explore means to foster the independent monitoring of juvenile detention and other custodial facilities, specifically the conditions under which children are deprived of their liberty, focusing on, inter alia, access of relatives, public institutions, other duly authorized persons and organizations, including non-governmental organizations, to such facilities, the problem of overcrowding, educational and vocational training, the amount of physical exercise and other activities and the frequency and seriousness of physical and sexual assault and self-inflicted injuries and suicide;

15. Calls upon all States, as well as intergovernmental bodies and non-governmental organizations, in accordance with the Convention on the Rights of the Child and taking into consideration the United Nations Guidelines for the Prevention of Juvenile Delinquency, to take all possible steps to eliminate violence against children, including in the family, whether such violence is perpetrated or condoned by the State or by individuals;

16. Urges States and relevant international bodies to promote research, collect data and compile statistics relating to the extent and incidence of different forms of violence against children, including the phenomenon of their exploitation and of their use as instruments in criminal activities, and to encourage research on their causes, nature, seriousness and consequences and on the effectiveness of measures implemented to prevent and redress such violence;

17. Also urges States to study and exchange information on the extent to which the experiences of violence suffered by children contribute to their subsequent criminal or deviant behaviour and/or mental health problems;

18. Urges States to develop and implement prevention and early intervention and treatment programmes for perpetrators and victims to treat all effects of violence, in order to seek to put an end to the cycle in which abusive behaviour is transmitted from generation to generation;

19. Further urges States, in order to eliminate all forms of violence against children, to adopt, in the absence of existing laws, initiatives including:

(a) Legislation to impose effective sanctions on perpetrators of acts of violence against children;

(b) Measures to reduce the wrong suffered by children who are subjected to violence;

(c) Measures to facilitate the in-court proceedings of child victims of violence and provisions for assistance services for child witnesses and victims;

(d) Measures to investigate properly acts of violence against children;

(e) Measures to prohibit the sexual abuse and exploitation of children, including the exploitation of children for the purpose of prostitution;

(f) Measures to prohibit traditional practices prejudicial to the health of children, including female genital mutilation;

(g) Measures to prohibit, in accordance with national legal systems, the production, possession, distribution and import of pornographic material involving children;

(h) Intervention programmes and treatment services to modify, always taking into consideration their human rights, the behaviour of offenders and at the same time ensuring the safety of children subjected to violence;

(i) Legislation to regulate the acquisition (with emphasis on safeguards concerning the furnishing by adults of firearms to children), the storage in the home and use of firearms;

(j) Measures to facilitate education in positive and non-violent child-caring practices;

20. Further urges States to ensure that children subjected to violence have access to assistance that meets their needs, such as, inter alia, access to support services, including legal assistance, to economic assistance, to counselling and to health and social services in order to promote their safety and physical and psychological recovery and social reintegration;

21. Further urges States to develop programmes in schools that promote non-violence, mutual respect and tolerance and programmes that enhance students' self-confidence and self-esteem and that teach students how to resolve their conflicts in a peaceful manner;

22. Requests States to promote and support public education and information activities to heighten public awareness of violence against children and of its criminal nature;

23. Urges States to invite, while respecting the freedom of the media, the media, media associations, media self-regulatory bodies, schools and other relevant partners to consider developing appropriate measures and mechanisms such as public education about the media, public awareness campaigns, codes of ethics and self-regulatory measures on media violence to contribute to the eradication of violence against children and to enhance respect for their dignity, by discouraging the perpetuation of pro-violence values;

24. Requests States to cooperate at the international level, through the use of bilateral, regional or multilateral mechanisms, in enforcing legislation on violence against children;

25. Invites States to examine ways, consistent with their national legal systems, of ensuring that prosecution of illicit traffic in children and other violent acts against them, including sexual exploitation of children for

commercial purposes, committed abroad by one of their nationals, is not prevented by gaps in international cooperation and that these acts are effectively sanctioned;

26. Invites the Commission to initiate the process of requesting the views of States regarding the process of elaborating an international convention on the illicit traffic in children, which may embody necessary elements to efficiently combat this form of transnational organized crime;

27. Urges States to take effective action to protect children from violence in situations of armed conflict, including such forms of violence as murder, torture, rape, sexual slavery and forced pregnancy, by making every effort, inter alia:

(a) To ensure respect for international humanitarian law, as well as international human rights instruments; and

(b) To ensure that children subjected to violence in situations of armed conflict have safe and timely access to assistance by humanitarian organizations;

28. Requests the Commission on Crime Prevention and Criminal Justice to invite the Secretary-General to consider publishing and widely distributing the draft United Nations manual on juvenile justice, when it has been finalized, by the United Nations Crime Prevention and Criminal Justice Branch of the Secretariat, in cooperation with the Centre for Human Rights, the United Nations Educational, Scientific and Cultural Organization, the Committee on the Rights of the Child and the United Nations Children's Fund;

29. Also requests the Commission to ensure that Strategies for Confronting Domestic Violence: a Resource Manual, which is based on a draft prepared by the Government of Canada, in cooperation with the Crime Prevention and Criminal Justice Branch of the Secretariat and the European Institute of Crime Prevention and Control affiliated with the United Nations, and currently available in English only, is published in the other official languages of the United Nations, subject to the availability of regular budgetary or extrabudgetary funds;

30. Further requests the Commission to invite the Secretary-General to enhance inter-agency cooperation within the United Nations system in the field of the administration of justice with regard to children by, inter alia, ensuring regular meetings, both at United Nations Headquarters and at the regional and national levels, including the United Nations Children's Fund, the United Nations Development Programme, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the Office of the United Nations High Commissioner for Refugees, the Centre for Human Rights and the Crime Prevention and Criminal Justice Branch, as well as the Committee on the Rights of the Child and the special rapporteurs concerned;

31. Recommends that the in-sessional working group of the Commission, at its fourth session, should seek ways to develop and undertake practical activities, including training, research and advisory services, to achieve the goal of preventing and eradicating violence against children;

32. Recommends that the Commission consider making the elimination of violence against children one of the priorities to guide the work of the United Nations crime prevention and criminal justice programme in the biennium 1996-1997 and recommends that the work in that area should be undertaken in close collaboration, inter alia, with the United Nations Children's Fund, the Commission on Human Rights, the Committee on the Rights of the Child, the United Nations Educational, Scientific and Cultural Organization and the Office of the United Nations High Commissioner for Refugees;

33. Also recommends that the Commission request the Secretary-General to submit a report on the implementation of the present resolution to it at its sixth session.

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1995/30/Add.1
1 August 1995

ENGLISH
Original: ENGLISH/FRENCH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-seventh session
Agenda item 16 (a)

PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS AT NATIONAL, REGIONAL AND INTERNATIONAL LEVEL

PREVENTION OF DISCRIMINATION AND PROTECTION OF CHILDREN: HUMAN RIGHTS AND YOUTH

Situation of children deprived of their liberty

Note by the Secretary-General prepared pursuant to Sub-Commission resolution 1994/9

Addendum

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GE.95-13180 (E)

INTRODUCTION

1. The present note contains additional replies received from Governments after the publication of the note by the Secretary-General on the subject (E/CN.4/Sub.2/1995/30).

2. As at 1 August 1995, replies had been received from the Governments of Cyprus, Germany, Guinea, San Marino and Turkey.

INFORMATION RECEIVED FROM GOVERNMENTS

Cyprus

[24 July 1995]
[Original: English]

Age of criminal responsibility

3. According to section 14 of the Criminal Code (cap. 154) of the Laws of Cyprus, a person under the age of 7 years is not criminally responsible for any act or omission. A person between the age of 7 and 12 years is not criminally responsible for an act or omission, unless it is proved that at the time of the act or omission he had the capacity to know that he ought not to do the act or to make the omission. Furthermore, under the same section, a male person under the age of 12 years is presumed to be incapable of having carnal knowledge.

Different treatment of children offenders

4. The Juvenile Offenders Law (cap. 157) deals with child offenders (under 14 and not over 16 years). It treats them differently from adult offenders taking into account their tender age and their welfare and rehabilitation. Under this Law, cases against juvenile offenders are heard by a juvenile court sitting in a different building or different room from that in which the ordinary sittings of the District Court are held, or on different days or at different times from such sittings, and privacy is fully respected at all stages of the proceedings. Also, the court must explain in simple language to the child or young person brought before it the substance of the alleged offence. Furthermore, the court invariably obtains information as to the child's or young person's general conduct, home surroundings, school record and medical history. With the aim of emphasizing prevention rather than punishment, a new procedure was adopted in 1978 for dealing with juvenile delinquents in cooperation with the police and the Attorney-General, so as to avoid penal measures for persons under 16 years of age. The essence of the current procedure is to treat such cases as children needing help rather than deal with them as young offenders. The handling of such cases is usually entrusted to the Welfare Department, the services of which are offered to the family of the child as a whole.

Children deprived of their liberty

5. Special measures are taken when children are deprived of their liberty. Under section 7 of the Juvenile Offenders Law (cap. 157), a court on remanding or committing for trial a minor who is not released on bail shall, where practicable, instead of committing him to prison commit him to custody in a police station. The police have the duty to make arrangements for preventing the association of the minor with adult detainees.

6. When dealing with cases where children and young persons are suspected of having committed an offence, the police make certain that the parents or guardians as well as the divisional police commander are promptly informed. Where the suspect is a pupil, arrest and examination at school is avoided; when such a course is absolutely necessary, it is carried out only with the consent and in the presence of the schoolmaster.

Germany

[18 July 1995]
[Original: English]

7. The Permanent Mission of Germany to the United Nations Office at Geneva referred to the initial report of Germany presented to the Committee on the Rights of the Child in accordance with article 44 of the Convention on the Rights of the Child (CRC/C/11/Add.5) which contains part of the information requested. The relevant information is reproduced below.

Right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment

8. The prohibition stipulated in article 37 (a), sentence 1, of the United Nations Convention on the Rights of the Child, namely that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment, corresponds to the guarantee laid down as a basic human right in article 7 of the International Covenant on Civil and Political Rights. It likewise corresponds to the guarantees laid down in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 and in the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987. Article 37 (a), sentence 2, of the present Convention repeats the prohibition of imposition of capital punishment for offences committed by persons under 18 years of age; this corresponds to the guarantee laid down in article 6, paragraph 5, of the Covenant. In its guarantees, the present Convention goes beyond the Covenant in so far as in article 37 (a), sentence 2, provision is also made for prohibiting the imposition of life imprisonment without the possibility of earlier release for offences committed by persons under 18 years of age. The Federal Republic of Germany fulfils these obligations through its system for execution of sentences and execution of sentences passed by youth courts, which is structured according to the rule of law, as well as through the provisions of section 18, subsection 1, of the Youth Courts Act, which limits prison sentences for juvenile offenders to a maximum of 10 years. The Basic Law abolished capital punishment. In addition, Germany has ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights as well as Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty.

The administration of juvenile justice

9. Article 10, paragraph 1, of the Convention obligates the States parties to ensure that juveniles who have infringed penal law are treated in a manner which especially emphasizes socio-educational and rehabilitative aspects. This corresponds to the objectives pursued under the national law of the Federal Republic of Germany through the Youth Courts Act. To achieve the objectives stipulated in paragraph 1 of article 40, paragraph 2 contains a list of pertinent measures. In this list, the Convention places special emphasis on the fact that the basic human rights enjoyed by any person accused of a crime in court must also be respected if a juvenile (a person from the age of 14 up to and including the age of 17) must answer for a crime.

10. Paragraph 2 (a) therefore stresses for juveniles the principle of nulla poena sine lege, which is already guaranteed as a basic human right by article 15, paragraph 1, sentence 1, of the International Covenant on Civil and Political Rights, by article 7, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms and, under German national law, by article 103, paragraph (2), of the Basic Law.

11. Paragraph 2 (b) then proceeds to list the specific rights of the juvenile, which largely correspond to the specific rights that are already guaranteed for any person accused of a crime, irrespective of his or her age, under the International Covenant on Civil and Political Rights as well as under the European Convention for the Protection of Human Rights and Fundamental Freedoms and are hence already binding on the Federal Republic of Germany.

12. The same applies to the presumption of innocence in favour of the juvenile mentioned in paragraph 2 (b) (i), which corresponds to the provisions of article 14, paragraph 2, of the International Covenant on Civil and Political Rights and of article 6, paragraph 2, of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

13. The right of the juveniles stipulated in paragraph 2 (b) (ii), namely to be informed of the charges against him or her - either directly or through his or her parents or legal guardians - and to have legal or other assistance, is already guaranteed by the provisions of article 14, paragraph 3 (a) and (b), of the International Covenant on Civil and Political Rights (see also art. 6, para. 3 (a) and (c), of the European Convention for the Protection of Human Rights and Fundamental Freedoms). This guarantee does not necessarily imply an obligation to assign legal or other appropriate assistance to a juvenile in a youth court proceeding in each and every case without exception; pursuant to the International Covenant on Civil and Political Rights, legal assistance must be assigned to the accused "in any cases where the interests of justice so require". The Federal Government therefore pointed out, within the framework of a declaration which it submitted at the time the instrument of ratification was deposited, that article 40, paragraph 2 (b), should be applied in such a way that, in the case of minor infringements of the penal law, there shall not in each and every case exist an entitlement to have legal or other assistance in the preparation and presentation of the defence. In cases of the latter kind, it is sufficient as a matter of principle under the provisions of national law (sect. 50, subsect. 1, and sects. 67 and 69 of the Youth Courts Act) if the parents or other persons with parental powers are able to participate in the main proceedings.

14. The recognition in paragraph 2 (b) (iii) of the right of the juvenile to a hearing by a competent and independent court merely serves to underscore the corresponding rights already arising - under national law as well - out of article 14, paragraph 1, of the International Covenant on Civil and Political Rights and article 6, paragraph 1, sentence 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms; however, in derogation from the aforementioned instruments, paragraph 2 (b) (iii) does not provide for a public hearing, a fact attributable to both the special position of the juvenile offender in a youth court proceeding and consideration of the best interests of the child. The alternative to a court hearing permitted

under the subparagraph, namely a hearing by a competent, independent and impartial authority, is irrelevant in the Federal Republic of Germany in view of the existing legal guarantee of the right of recourse to the courts. In order to avoid unnecessarily burdening the juvenile with a formal criminal proceeding entailing preferment of charges, main proceedings and sentencing, and in order to administer justice in a manner appropriate to the nature of juvenile crime, courts in Germany are increasingly availing themselves of the option of informally handling juvenile crime cases. This means that under certain circumstances the public prosecutor refrains from prosecuting or - likewise under certain circumstances - the judge dismisses the case following preferment of charges (sects. 45 and 47 of the Youth Courts Act).

15. The procedural guarantees under the rule of law which arise out of paragraph 2 (b) (iv) are binding in the Federal Republic of Germany for the simple reason that such guarantees for accused persons of any age already arise out of article 14, paragraph 3 (e) and (g), of the International Covenant on Civil and Political Rights and, to a certain extent, out of article 6, paragraph 3 (d), of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

16. Paragraph 2 (b) (v) - essentially concurring with article 14, paragraph 5, of the International Covenant on Civil and Political Rights - contains the guarantee for the person convicted of a crime to have the decision of his case reviewed by a higher judicial body. Since the Federal Republic of Germany does not unconditionally accept this principle, it already made a reservation to this effect at the time the instrument of ratification of the International Covenant on Civil and Political Rights was deposited; that reservation, which concerned article 14, paragraph 5, of the Covenant, stipulated that "in the case of minor infringement of the penal law, there shall not in each and every case exist an obligation to have a sentence not calling for imprisonment reviewed by a 'higher competent authority or judicial body'". The Federal Republic of Germany made a similar reservation at the time the instrument of ratification of the present Convention was deposited.

17. In respect of the guarantee contained in paragraph 2 (b) (vi), providing for the assistance of an interpreter if circumstances so require, reference is made to the parallel guarantees in article 14, paragraph (3) (f), of the International Covenant on Civil and Political Rights and in article 6, paragraph 3 (e), of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

18. Concerning the entitlement laid down in paragraph 2 (b) (vii), namely the juvenile's entitlement to respect for his or her privacy, reference is made in respect of court proceedings to the corresponding (parallel) guarantees in article 14, paragraph 1, sentence 3, of the International Covenant on Civil and Political Freedoms and in article 6, paragraph 1, sentence 2, of the European Convention for the Protection of Human Rights and Fundamental Freedoms. German national law furthermore takes due account of the requirement to protect the juvenile's privacy in criminal proceedings especially through section 48 of the Youth Courts Act, which stipulates that the main proceedings of a juvenile charged with an offence shall be held in camera. This does not apply if adults or adolescents (persons from the age of 18 up to and including the age of 20) are concurrently charged with an

offence; in such cases, however, the public may be excluded "if this is advisable in the interest of the re-education of the juvenile who has been charged" (sect. 48, subsect. 3, sentence 2, of the Youth Courts Act).

19. Pursuant to article 40, paragraph 3, of the Convention, the States parties are called upon to establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law. This requirement is met under German law by section 19 of the Criminal Code, from which it follows that a child under the age of 14 has no capacity to infringe the penal law.

20. In conformity with article 40, paragraph 4 of the Convention, the Youth Courts Act provides for a wide variety of measures which serve to further the special objectives of the youth court proceedings, namely the re-education and reintegration of the juvenile offender.

Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings

21. Article 37 of the Convention confirms that the general human rights guarantees which are of relevance to criminal proceedings must also be observed in criminal proceedings against juveniles. It does so by repeating those human rights guarantees laid down in the International Covenant on Civil and Political Rights which are of fundamental importance to criminal law and the law of criminal procedure and modifying them to cite the child as the holder of said rights. There is hence no need for a harmonization of legal provisions because the Federal Republic of Germany is also one of the States parties to the aforementioned Covenant. In accordance with article 40 of the Covenant, the Federal Government has submitted to the Human Rights Committee a number of reports concerning the fulfilment of the obligations it assumed under the Covenant. The Federal Government therefore presumes that the Federal Republic of Germany is not assuming any obligations under article 37 of the present Convention which are more extensive than those it assumed upon ratification of the International Covenant on Civil and Political Rights.

22. Article 37 (b), sentence 1, of the Convention repeats specifically for children the guarantees following from article 9, paragraph 1, of the Covenant. Sentence 2 of article 37 (b) goes beyond article 9, paragraph 3, of the Covenant by giving the "child" a right to imprisonment "only as a measure of last resort and for the shortest appropriate period of time". It is clear that the provision is not to be interpreted to mean that juvenile prison sentences may only be of brief absolute duration; rather, in view of the re-educative purpose of the penalty, imprisonment should be imposed for the shortest period of time appropriate under the given circumstances. It must hence be ensured that the re-educative purpose of the penalty is served as comprehensively as possible. Section 18 of the Youth Courts Act meets these requirements.

23. Article 37 (c), sentence 1, of the Convention confirms the human rights guarantees already arising for every person out of article 10, paragraph 1, and paragraph 3, sentence 2, of the International Covenant on Civil and Political Rights and, under German national law, out of article (1) of the Basic Law as well. The Federal Government emphatically advocates the

maintenance of contact between the juvenile and his or her family which is guaranteed in article 37 (c), sentence 2, "save in exceptional circumstances". The possibility provided for in article 37 (c), sentence 2, namely that juveniles deprived of liberty need not be separated from adult offenders if it is considered in the child's best interest to refrain from undertaking such reparation, is of virtually no practical relevance in the Federal Republic of Germany.

24. A number of the rights of the "child" recognized in article 37 (d) of the Convention already arise - and are hence binding under national law - out of article 9, paragraph 4, of the International Covenant on Civil and Political Rights. The right to prompt access to appropriate assistance is already essentially ensured under article 14, paragraph 3, of the International Covenant on Civil and Political Rights, which guarantees everyone charged with a criminal offence the opportunity to communicate with counsel (subpara. (b)) and to have free legal counsel (subpara. (d)). Article 37 (d) of the present Convention cannot be interpreted to mean that a juvenile must be assigned legal counsel in each and every criminal proceeding. Rather, it is left to the discretion of the States parties to decide whether the juvenile offender is to be assigned legal counsel or "other appropriate assistance". The "right to prompt access to legal and other appropriate assistance" is, for instance, also observed if the juvenile - or his or her parents or other persons having the right of care and custody - retain an attorney of their own choosing as counsel for the defence; this option is not subject to any restrictions in the Federal Republic of Germany.

25. In addition to the information contained in the above-mentioned report, the Permanent Mission would like to draw attention to the following: under German criminal law special rules are applicable in proceedings initiated against minors (aged 14 to 18 years) and adolescents (aged 18 to 21 years) with regard to procedural matters and the execution of sentences. Detention of minors and adolescents, whether in the execution of a sentence or pending trial, is carried out by specialized staff in specialized detention facilities. Any such sentence aims primarily at resocializing the detainee. To this end a series of measures to further education such as vocational training is offered. Furthermore, social contacts with relatives of the detainees and other persons outside the detention facilities are encouraged so as to facilitate reintegration of the detainees after their release.

Guinea

[6 July 1995]
[Original: French]

26. In the Republic of Guinea, the legal basis for any criminal proceeding is defined by article 9 of the Fundamental Law promulgated by Decree No. 250/PRG/SGG/90 of 31 December 1990, according to which: "No one may be arrested, detained or convicted except on grounds and in accordance with the procedures established by law. Everyone has the imprescriptible right to apply to a court of law in order to assert his rights against the State and its agents. Everyone is entitled to a fair and impartial trial, in which his right to defend himself is guaranteed. The law lays down the necessary penalties in proportion to the offences which can justify them."

27. The Guinean Criminal Code determines the length of the penalty and the Guinean Code of Criminal Procedure defines the procedure to be followed.

28. With regard to the situation of children deprived of their liberty and the application of the provisions and rules designed to protect them, the latter cover children in conflict with the law as well as the administration of criminal justice for minors. The Guinean Penal Code, which was introduced in June 1975, deals with the issue in Chapter III concerning absence of criminal responsibility and minority (arts. 58 to 62). It distinguishes three categories of minors in criminal matters: minors under 13 years of age; minors aged between 13 and 18; minors over 13 and under 16 years of age.

29. The guiding principle on the subject is as follows:

(a) In the case of a minor under the age of 13 charged with an offence, only measures of guardianship, supervision, reform and assistance may be ordered as appropriate, by the President of the court in chambers. The child is entrusted either to his parents or guardians, to a trustworthy person or else to a charitable institution. If the charges against the child are not sufficient, or the acts of which he is accused do not constitute an offence, the examining magistrate dismisses the charges. If, on the other hand, the child is found to be the author of an act qualified as an offence, the magistrate carries out an investigation into his character and past record, the material and moral situation of his family and measures likely to bring about an improvement in his conduct. Once the investigation is completed, the examining magistrate refers the minor to the court, if appropriate (art. 58). According to article 59:

> "The Court comes to a decision in chambers after having heard the child, witnesses, parents, guardian or person having custody as well as the government procurator and the defence counsel appointed. If the charge is established, the judge takes one of the following steps:
>
> He returns the child to his family; or
>
> He places the child either in the custody of a trustworthy person, or in a charitable institution, or in an appropriate rehabilitation centre until he reaches the age of majority".

It may be said that this category of minors is covered by absolute exemption from criminal responsibility.

(b) With regard to minors aged between 13 and 18 years, article 60 provides that: "Offences carrying a prison sentence committed by minors between the age of 13 and 18 are referred to correctional courts, following a preliminary investigation requested by the government procurator's department. The examining magistrate may adopt the same interim measures for minors under 13 years of age." Under article 61, if a minor aged between 13 and 18 is charged with an offence:

> "1. Where it is decided that he acted without due discernment, he will be acquitted of the charges and, depending on the circumstances, handed over either to his parents, or to a charitable institution or person, or

else to an appropriate rehabilitation centre. He will be kept and brought up there for the number of years specified in the sentence, but not beyond the time when he reaches the age of 21.

2. Where it is decided that he acted with due discernment, the penalty imposed shall be no more than half of that to which he would be liable if he were 18 years of age".

(c) According to article 62, a minor over 13 and under 16 years old charged with a crime is tried by the correctional courts. Where it is decided that he acted with due discernment, the following penalties shall be applied: a 10-year prison sentence where the death penalty or hard labour for life was incurred; a 5-year prison sentence where long-term hard labour, detention or rigorous imprisonment was incurred; imprisonment for a period of 1 to 5 years where loss of civil rights was incurred. In all cases he may be banned for a minimum of 5 and a maximum of 10 years from places specified in an order issued by the Minister in charge of services of the interior, currently the Minister of the Interior and Security. In view of the foregoing, we may affirm that the latter two categories of minors, namely, those between the ages of 13 and 18 and over 13 and under 16 respectively, are covered by qualified exemption from responsibility.

Treatment of children deprived of their liberty

30. When a minor is sentenced to deprivation of freedom, the sentence is served in a local correctional prison. The child ought to be kept separate from adults, but in practice, because there are no specialized detention facilities, a convicted minor lives in the same circumstances as adults. In Guinea, at the civil prison in the capital, one section is set aside for children and women, but within the same enclosure.

31. It must also be said that children's homes and re-education and social rehabilitation centres are few and far between or non-existent. There is a lack of any centre that would enable appropriate action to be taken to avoid having to detain all children under the same conditions in every specific case.

Supervisory machinery set up in pursuance of the rules designed to ensure the protection of children deprived of their liberty, democracy and respect for human rights

32. With the aim of protecting children deprived of their liberty, a children's court has been appointed for each court of first instance under ordinance No. 109/PRG/86 of 5 July 1986, which authorizes the establishment of one minor's court for two magistrates' courts in Conakry, making a total of eight children's courts. According to article 34 of the above-mentioned ordinance, a children's court comprises:

(a) A president;

(b) Two judges appointed from an annual list drawn up by the Ministry of Justice at the proposal of the Department of Social Affairs;

(c) A children's judge responsible for the investigation of all cases brought before the court.

33. The children's court is assisted by a registry, including a chief registrar and, if the needs of the service so require, other registrars. In the whole country there are eight courts, which unfortunately do not have enough resources to fulfil their obligations effectively. Support is thus needed in this field, in order to ensure effective respect for the rights of the child in Guinea.

34. In order to ensure compliance with the rules for the protection of children,

(a) The draft initial report of the Republic of Guinea has been drawn up and submitted for amendment;

(b) The Convention on the Rights of the Child has been ratified and promulgated, on 10 April 1990;

(c) Decree D/95/010/PRG/SGG of 16 January 1995 establishing the Guinean Committee for the Protection and Defence of the Rights of the Child has been signed.

35. The Government's political will has been manifested through the promotion or official recognition of NGOs of a legal nature concerned with the defence of human rights in general and those of the child in particular. The following points should also be mentioned:

(a) The renewed recognition of the status of the legal profession in Guinea is an event of some importance, the assizes that have been held in Guinea for the last four months being an eloquent illustration of the importance of lawyers in a State governed by the rule of law;

(b) The establishment of all democratic institutions, such as:

(i) The fundamental law;

(ii) The Supreme Court;

(iii) The National Communication Council;

(iv) The Council of the Senior Magistracy;

(v) The organization of presidential elections on 19 December 1994;

(vi) The establishment of a full-scale multiparty system;

(vii) The elections to the National Assembly, which took place on 11 June 1995.

36. If further progress is to be made along these lines, it is essential that the Government and civil society should be given support in carrying out projects for open re-education centres at which young people could learn trades and thus improve their lives.

Comments

37. Guinea notes that the preliminary inquiry aspect is not covered in Sub-Commission resolution 1994/9.

38. However, at police and gendarmerie stations and other similar institutions, consideration should be given to having some kind of supervision to prevent abuse and ill-treatment of children detained in custody.

39. In prisons, units independent of the prison supervisory administration or the judicial inspection services ought also to be inspected for periodic assessments at the national or even international level. This would make it possible to formulate or adjust policies with regard to the protection of children deprived of their liberty.

Suggestions

40. To permit effective application of the different legal instruments on human rights, and in particular resolution 1994/9 on the situation of children deprived of their liberty, it would be desirable to:

(a) Invite States parties which have not yet done so to set up a department of supervised education or a department for judicial protection of young people in the Ministry of Justice;

(b) Invite States to increase their budgets for the social sector in order to encourage the establishment of re-education centres and strengthen international cooperation;

(c) Recommend studies and research in the fields covered by the resolutions mentioned above;

(d) Recommend the appointment of a commission or one commissioner per State party to the Convention on the Rights of the Child to be responsible for the rights of the child;

(e) Train lawyers, paralegal staff and judges responsible in this area;

(f) Propose a system for clearing the judicial records of minors deprived of their liberty after their release;

(g) Send the documentation on all the international legal instruments relating to women and children to the Ministry for the Advancement of Women and for Children.

41. All efforts will be in vain if projects are not undertaken to establish adequate infrastructure so that adults can be kept separate from children deprived of their liberty, since otherwise the latter will be liable to offend again and the chances of rehabilitation will be minimal.

San Marino

[10 July 1995]
[Original: English]

42. As regards minors' imputability, the San Marino Penal Code sets forth that "Any person who has not attained the age of 18 is not chargeable. In case of a minor who has reached the age of 12 but is still under 18, the judge, after having established his/her mental competence, inflicts the punishment with a reduction from one to two degrees".

43. The San Marino legal system complies with article 40 of the Convention on the Rights of the Child. Therefore, if a minor is found guilty, San Marino applies the provisions laid down in that article.

Turkey

[7 July 1995]
[Original: English]

44. Law No. 2253 on the "Organization and Procedures for Proceedings of Juvenile Courts" regulates the procedures concerning the treatment of juvenile delinquents.

45. Article 11 of the above-mentioned Law states that, "A juvenile delinquent, who is below the age of 11 at the time of the commission of the crime, cannot be prosecuted or convicted. If the crime normally carries a sentence of imprisonment longer than one year or heavy punishment, the delinquent shall be subject to the measures enumerated in article 10 of the present Law. These measures may not be applied to those delinquents below the age of 11 if the parents or guardians or caretakers take adequate steps for their fostering."

46. In accordance with article 10, "juvenile delinquents who cannot be prosecuted or convicted shall be referred to:

- the parents, legal guardians or any relatives who take the responsibility of care therefor; or,
- foster parents; or,
- special institutions for child care and protection; or,
- state enterprises or skilled workmen or craftsmen that can offer employment opportunities; or,
- rehabilitation centers, state or private hospitals offering special education to children whom so require."

47. Before the decision for conviction is taken, an investigation is conducted about the family, social conditions, upbringing and educational backgrounds of the juvenile delinquent between the ages of 11 and 15. The investigation is carried out by social workers, psychologists and psychiatrists employed by juvenile courts (art. 20). If this investigation does not deem punishment necessary, the juvenile delinquent is subjected to the provisions of article 10.

48. It is stated in article 19 that "... without hampering the implementation of measures enumerated in article 10, during prosecution or trial, no decision for arrest can be taken for juveniles, who have committed crimes which require a minimum of three years imprisonment".

49. Article 36 states that "Juvenile delinquents who are between the ages of 11 and 15 at the time of the commission of the crime and those who are below the age of 18 at the time of the decision for punishment are sent to detention centres".

50. In accordance with article 25 of the above-mentioned Law, trials of juvenile delinquents are held in camera. Their lawyers, parents, legal guardians and social workers, psychologists and psychiatrists employed by the juvenile courts may be permitted to be present in the courtroom.

51. A cooperation protocol was signed between the Directorate General of Security and the Directorate General of Social Services and Child Protection in 1994, in order to conduct activities aimed at the prevention of juvenile delinquency and re-establishment of relations between runaway as well as abandoned children and their families. Social workers are appointed in the Child Protection Departments affiliated with the police headquarters in the provinces of Adana, Ankara, Bursa, Gaziantep, Istanbul and Izmir.